IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME TAX APPLICATION NOS. 8/1996, 7/1996, 9/1996 & 14 OF 1996

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J. P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
JUNE 19, 2007.

Heard Shri Jaiswal, learned counsel for the applicant and Shri Thakkar, learned counsel for the respondent.

In all these applications, the basic question raised by the revenue is whether the Tribunal was justified in holding that the respondent firm is liable to be treated as registered firm. Since the issue is common, all these applications are heard together and disposed of by this common order.

The Assessment Years involved herein are A.Y. 1983-84 and 1984-85.

In the Assessment Year 1983-84, the Assessing Officer had passed an order under Section 185(1)(b) of the Income-tax Act, 1961, treating the respondent – firm as unregistered firm. Thereafter the CIT invoked his jurisdiction under Section 263 of the Income-

tax Act, 1961, and held that the firm be treated as registered firm under Section 183(b) of the Act. On appeal filed by the assessee (ITA No.459/Nag/88), the Tribunal set aside the order of the C.I.T. under Section 263 and restored the order of Assessing Officer treating the firm as unregistered firm for the purposes of Section 183(b) of the Act.

On appeal filed by the assessee against the order of Assessing Officer treating the firm as unregistered under Section 185(1)(b) of the Income-tax Act, the C.I.T. (A) set aside the order of Assessing Officer and directed that the firm be treated as registered firm. Further appeal filed by the revenue has been dismissed. Even the reference applications filed by the revenue were dismissed. Hence these applications.

The question raised by the revenue in the present case is that once the Tribunal has held in ITA No.459/Nag/88 relating to A.Y. 1983-84 that the firm is liable to be treated as unregistered firm for the purposes of Section 183(b) of the Act, whether the Tribunal was justified in holding that for the purposes of Section 185(1)(b) of the Act, the firm is liable to be treated as registered firm.

In our opinion, the question needs consideration. Accordingly, we allow the applications by directing the Tribunal to forward the statement of the case on the following questions of law in **I.T.A. No. 7 of 1996** : (A.Y. 1984-85)

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in setting aside the order of the first appellate authority and directing him to treat the firm as a registered firm carrying on business activity even though the order of the Tribunal in ITA No.123/Nag/93 on which it has relied has not been accepted by the Department ?"

In I.T.A. No. 8 of 1996 (A.Y. 1983-84)

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the CIT(A) allowing registration to the firm contrary to its earlier decision in ITA No.459/Nag/88 dated 23.01.1992 ?"

In view of the calling of the statement of the case on the aforesaid two questions of law in ITA Nos.7 of 1996 and 8 of 1996, it is not necessary to call for statement of the case in ITA Nos. 14 of 1996 and 9 of 1996.

All these applications are disposed of accordingly. No order as to costs.

JUDGE **JUDGE**

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